

TENTATIVE RULINGS for CIVIL LAW and MOTION
September 23, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942
Department Eight: (530) 406-6848

TENTATIVE RULING

Case: Carter v. Chang
Case No. CV PM 08-1268

Hearing Date: September 23 2009 **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to recover costs of personal service is **GRANTED IN PART**. (Code Civ. Proc., §§ 415.30 & 1033.5.) Defendant shall pay plaintiff's costs incurred to personally serve the summons and complaint in the amount of \$135.00 and the filing fee for this motion in the amount of \$40.00. As the cost for photocopying is not allowed under Code of Civil Procedure section 1033.5 and the cost for court call is prospective and unnecessary since, the motion is unopposed, those costs are **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the tentative ruling on Defendant on September 23, 2009. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: Lighty v. Crosslink-D, Inc.
Case No. CV CV 07-2588

Hearing Date: September 23, 2009 **Department Fifteen** **9:00 a.m.**

The request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

First cause of action for negligent misrepresentation: The motion for summary adjudication is **DENIED**. The motion as to the first cause of action is based on representations concerning litigation risks. (Opening brief, pages 12-16.) The Private Placement Memorandum (“PPM”) disclosed the nature of the disputes between the company and Dan Sueflohn and Joseph Largey, that Mr. Sueflohn had sued Dr. Cochrum and Crosslink-D, Inc. (“Crosslink”), and that Joseph Largey may sue Crosslink. (Pages bates-stamped LIGHTY 0113 and 0118-0120 in Exhibit A to Lighty Declaration.) The PPM also disclosed that Crosslink was “likely to seek a declaratory

judgment” action against Mr. Largey. (Page bates-stamped LIGHTY 0136-0137 in Exhibit A to Lighty Declaration.) There is no evidence that as of early to mid-November, 2006, when the plaintiff received the PPM and Investor Materials (“IM”) (Lighty Declaration ¶ 2), or December 21, 2006, Dr. Cochrum or anyone else at Crosslink knew that the company was about to file a lawsuit against Mr. Largey or Mr. Sueflohn. (Cochrum Depo. 94: 18-95: 4; 98: 20-25; 100: 4-6; 101: 22-102: 15.) As for the plaintiff’s contention regarding potential litigation with Silverback7, Dr. Cochrum believed that any claim by Silverback7 had been resolved. (Cochrum Depo. 141: 23-142: 4; 144: 6-13.) Finally, as for the plaintiff’s contention that Dr. Cochrum failed to disclose to the plaintiff that the lawsuit against Mr. Largey could not be won, there is no evidence that, in November, 2006, Dr. Cochrum knew that Crosslink’s lawsuit could not be won. (Cochrum Depo. 177: 24-178: 25.) Plaintiff does not cite any statement made or provided to him after December 21, 2006, that omitted information about the lawsuit against Mr. Largey and Mr. Sueflohn.

Second cause of action for fraud/deceit: The motion for summary adjudication is **DENIED**. The PPM clearly disclosed the substantial risk in investing in Crosslink. (Page bates stamped LIGHTY 0112 in Exhibit A to Lighty Declaration.) The PPM did not represent that any amount of an investor’s money would be used for a particular purpose only. (Page bates stamped LIGHTY 0103 in Exhibit A to Lighty Declaration.) The PPM disclosed that investment proceeds could be used to pay legal expenses. (Page bates stamped LIGHTY 0103 in Exhibit A to Lighty Declaration.)

It has not been established that the representations in the PPM and IM that Douglas Evans and Tom Bentson were part of the management or leadership team were false. (Cochrum Depo. 46: 13-17; 49: 6-7; 65: 5-66: 2; 66: 5-7; 68: 17-19; 156: 1-4.) There is no evidence about when Mr. Bentson actually stopped performing work for the company. As for the statement that Mr. Evans was the company’s CEO, there is no evidence that Dr. Cochrum knew that the PPM or IM provided to the plaintiff erroneously listed Mr. Evans as the CEO. (Opening brief, page 6; Cochrum Depo. 60: 2-10; 60: 23-61: 6; 63: 3-13; 64: 6-19; 64: 24-65: 1; 103: 13-14; 104: 7-9.)

Plaintiff has not established that he is entitled to summary adjudication as to any claim based on the Significant Changes Memo because the plaintiff did not receive a copy of this memo (Lighty Declaration ¶ 24) and could, therefore, not have relied on any statement therein; additionally, Dr. Cochrum was unaware of this memo until February, 2007, and could not have harbored any bad intent by virtue thereof. (Cochrum Depo. 90: 16-22.)

The fraud claim based on Crosslink’s representation that it had engaged a primary manufacturer is not supported by the PPM. (Page bates stamped LIGHTY 0103, 0123 and 0144 in Exhibit A to Lighty Declaration.) As for the statement in the IM regarding engaging a manufacturer, there is no evidence about who authored the IM or what the author knew.

Plaintiff’s fraud claim based on representations concerning FDA approval are not supported by the PPM. (Pages bates-stamped LIGHTY 0123-0125 in Exhibit A to Lighty Declaration.)

As for the fraud claim based on the hiring of additional workers, the Court cannot determine that the only reasonable inference from the statements on the page bates-stamped LIGHTY 0026 in Exhibit B to Craig Lighty's Declaration is that such statements were false when made. It is unclear what the 3- and 6-month benchmarks referenced in the IM refer to. There is also no evidence of knowledge of falsity or intent to deceive in relation to the statements in the IM. The company's attempts to hire a chemist prior to December 21, 2006, suggest that statements about future hiring were not false when made. (Cochrum Depo. 112: 15-25.) After December 21, 2006, the company hired an office manager. (Cochrum Depo. 126: 5-9.) Additionally, other people worked for the company, albeit on a non-paid basis. (Cochrum Depo. 126: 15-22.) Based on the record before it, the Court cannot determine that Crosslink did not intend to meet its goal of increasing its workforce.

As for the fraud claim based on the use of a direct sales force, the PPM does not support the plaintiff's contentions. (Page bates stamped LIGHTY 00145 in Exhibit A to Lighty Declaration.) It has not been shown that Crosslink had not "done the necessary business planning to build a direct sales force". (Page bates stamped LIGHTY 00103 in Exhibit A to Lighty Declaration.)

Third cause of action for concealment: The motion as to this cause of action is **DENIED**. Consistent with the above findings, it has not been shown that Dr. Cochrum intentionally concealed a material facts or intended to defraud the plaintiff. (*Superior Dispatch, Inc. v. Insurance Corp. of New York* (2009) 176 Cal.App.4th 12, 33.)

Fourth cause of action for constructive fraud: The motion as to this cause of action is **DENIED**. The motion as to this cause of action is based on the fiduciary duty that Dr. Cochrum owed to the plaintiff as a corporate director. (Opening brief, page 17.) Plaintiff has not established that Dr. Cochrum breached a fiduciary duty owed to the plaintiff. The PPM described the business risks in investing in Crosslink. (Page bates-stamped LIGHTY 0112 in Exhibit A to Lighty Declaration.) It has not been shown that the statements in the PPM did not fairly disclose the litigation risks the company faced. (Pages bates-stamped LIGHTY 0118-0120 and 0136-0137 in Exhibit A to Lighty Declaration.)

Sixth cause of action or negligent breach of fiduciary duty: The motion as to this cause of action is **DENIED**. For the reasons stated above, the plaintiff has not established a breach of fiduciary duty owed to him.

Eighth cause of action for unjust enrichment: The motion as to this cause of action is **DENIED**. This cause of action is alleged against Dr. Cochrum only. (Complaint, page 20.) Plaintiff may not move for summary adjudication against Dr. Cochrum because of the bankruptcy stay.

Eleventh cause of action for violations of Corporations Code sections 25400 and 25500: The motion as to this cause of action is **DENIED**. To establish a violation of Corporations Code section 25500, the plaintiff must establish intent to defraud through a knowingly false statement. (*California Amplifier, Inc. v. RLI Ins. Co.* (2001) 94 Cal.App.4th 102, 112.) As

discussed above, the plaintiff has not established intent to defraud or a knowingly false statement.

Punitive damages claim: The motion as to the plaintiff's claim for punitive damages is **DENIED**. Plaintiff has not established oppression, fraud, or malice by clear and convincing evidence. (Civ. Code, § 3294, subd. (c)(1).)

Attorney's fee claim: The motion as to the plaintiff's claim for attorney's fees under Civil Code section 1717 is **DENIED**. Plaintiff may not move for summary adjudication on a claim for attorney's fees under Civil Code section 1717. (Code Civ. Proc., § 437c, subd. (f).)

TENTATIVE RULING

Case: Pappas v. Throne

Case No. CV PO 08-1613

Hearing Date: September 23, 2009 **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motions to compel responses to form interrogatories, set one, is **GRANTED**. (Code Civ. Proc., §§ 2023.010 et seq., 2030.290, subds. (b) & (c).) Defendant shall serve verified responses to plaintiff's form interrogatories, set one, without objections, to Plaintiff by October 14, 2009. Defendant shall pay Plaintiff \$590.00, in sanctions by October 14, 2009.

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the tentative ruling on Defendant on September 23, 2009. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: Phillips v. Tahboub

Case No. CV F3 08-2112

Hearing Date: September 23, 2009 **Department Eight** **1:30 p.m.**

Petitioner's unopposed motion to compel and for an order establishing admissions is **GRANTED**. (Code Civ. Proc. §§ 2030.290, 2031.300 and 2033.280.) Petitioner's requests for admissions are **DEEMED ADMITTED**. Respondent shall serve verified responses, without objections, to petitioners form interrogatories and requests for production of documents by October 14, 2009.

Petitioner's request for sanctions is **GRANTED**. (Code Civ. Proc. §§ 2023.010 et seq., 2030.290, 2031.300 and 2033.280.) Respondent shall pay petitioner \$850.00 by October 14, 2009.

Respondent's motion for renewal of prior rulings is **DENIED**. (Code Civ. Proc., § 1008, subd. (b).) Respondent failed to serve a copy of the motion on petitioner. (Dec. of Wallach, ¶¶ 1-10;

Dec. of Altamirano, ¶¶ 1-2; Dec. of Egan, ¶ 2.; Dec. of Ortiz, ¶ 2.). Respondent failed to show any new or different facts, circumstances or law.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Wells Fargo Bank, N.A. v. Rodriguez**
 Case No. CV CV 09-840

Hearing Date: **September 23, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to strike the answer is **DENIED AS MOOT**: (Code Civ. Proc., § 472.)
Plaintiff filed a verified amended answer to the complaint on September 9, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.